STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of R. CASNAVE, Minor.

UNPUBLISHED
January 14, 2014

No. 317940
Berrien Circuit Court
Family Division
LC No. 2013-000047-NA

Before: HOEKSTRA, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent father appeals by right the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and MCL 712A.19b(3)(j) (child will be harmed if returned to parent). We affirm.

The Department of Human Services petitioned for removal of the minor child and termination of parental rights after receiving a report that the child's mother was the victim of a homicide; respondent was alleged to have committed the crime. Respondent was charged with the mother's murder, later admitted to shooting the child's mother several times while the child was lying next to her in bed, and remained incarcerated in the county jail during the course of the termination proceedings. Respondent requested an adjournment to hire an attorney at the initial dispositional hearing, which the trial court granted; however, he never hired an attorney and failed to establish his paternity of the child. Subsequently, the trial court terminated respondent's parental rights in August 2013.

On appeal, respondent first argues that the trial court violated his rights by terminating a video link between the jail and the courtroom during the termination proceeding in violation of MCR 2.004. We disagree. Generally, an appeal from an order terminating parental rights is reviewed under the clearly erroneous standard. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The interpretation of the court rules is reviewed de novo. *In re AMAC*, 269 Mich App 533, 536; 711 NW2d 426 (2006). Because respondent did not preserve this issue, our review is limited to plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008).

MCR 2.004 applies to actions regarding "termination of parental rights" where "a party is incarcerated under the jurisdiction of the Department of Corrections." MCR 2.004(A)(2). Respondent was in the Berrien County jail and MCR 2.004 is inapplicable. Nevertheless, our Supreme Court has stated that "MCR 2.004 requires the court and the petitioning party to arrange for telephonic communication with incarcerated parents whose children are the subject of child

protective actions." *In re Mason*, 486 Mich 142, 152-153; 782 NW2d 747 (2010); MCR 2.004(A)-(C). MCR 2.004(F) provides:

> A court may not grant the relief requested by the moving party concerning the minor child if the incarcerated party has not been offered the opportunity to participate in the proceedings, as described in this rule. *This provision shall not apply if the incarcerated party actually does participate in a telephone call . . . .* [Emphasis added.]

Assuming that MCR 2.004 applies to the facts of this case, our Supreme Court has explained that "to comply with MCR 2.004, the moving party and the court must offer the parent 'the opportunity to participate in' each proceeding in a child protective action. For this reason, participation through 'a telephone call' during one proceeding will not suffice to allow the court to enter an order at another proceeding for which the parent was not offered the opportunity to participate." *In re Mason*, 486 Mich at 154.

Here, respondent was present at every hearing via video conference. Furthermore, the evidence of record provides that he voluntarily left the August 2013 phone conference. Although the trial court informed respondent that the hearing would proceed if he left, respondent repeated that he was going to leave, and then exited the video room at the jail. In fact, even after respondent left, the trial court continued to make efforts to ensure that he could return if he decided to do so. Specifically, the trial court left the video feed open for several minutes, and then, when it was disconnected, the trial court set up a procedure by which respondent could return to the proceedings if he changed his mind about participating. Therefore, because respondent was given the opportunity to and actually participated in each proceeding, and, therefore there was no error. *In re Utrera*, 281 Mich App at 9; MCR 2.004(F).

Next, respondent argues that the trial court had an obligation to determine whether respondent was the legal father before beginning a hearing to terminate his parental rights, which it failed to do in this case. We review this unpreserved issue for plain error affecting respondent's substantial rights. *In re Utrera*, 281 Mich App at 8.

There is no evidence of record that respondent met the definition of a legal father under any of the provisions of MCR 3.903(A)(7). Nevertheless, the trial court did take steps to aid respondent in establishing paternity. Specifically, the trial court granted respondent's request for an adjournment because he indicated on the record that he was going to hire an attorney to assist him with the proceedings. The trial court also ordered a DNA test. Still, respondent never attempted to establish himself as the legal father, apart from the court ordered DNA test. Thus, respondent was only a putative father under MCR 3.903(A)(24) and was never determined to be a legal father as defined in MCR 3.903(A)(7). Respondent cites no authority that the trial court had to determine that he was the legal father. Further, there is no evidence of record that respondent's rights as a putative father were violated. Accordingly, we find no plain error with regard to the trial court's actions concerning respondent's status as a putative father at the termination hearing.

Finally, respondent asserts that the trial court failed to determine which provision of MCL 710.39 applied to these proceedings. This issue is also unpreserved. *In re Utrera*, 281

Mich App at 8. Because MCL 710.39 is part of the Adoption Code, MCL 710.21 *et seq*., it is inapplicable to the facts of this case, which was a termination proceeding under the juvenile code MCL 712A.1, *et seq*. Thus, there is no plain error.

We affirm.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/Amy Ronayne Krause